

Exhibit A

Compromise Motion

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15 **UNITED STATES BANKRUPTCY COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**  
 17 **SANTA ANA DIVISION**

18 In re  
 19 LBREP/L-Sun Cal Master I, LLC, et al.,  
 20 Debtor.

Case No. 8:08-bk-15588-ES

Chapter 11 Case

(Jointly Administered with Case Nos.  
 8:08-bk-15637-ES; 8:08-bk-15639-ES; and  
 8:08-bk-15640-ES)

21        Affects LBREP/L-SunCal Master I,  
 22 LLC, Only  
 23        Affects LBREP/L-SunCal McAllister  
 24 Ranch, LLC, Only  
 25        Affects LBREP/L-SunCal  
 26 McSweeny Farms, LLC, Only  
 27        Affects LBREP/L-SunCal  
 28 Summerwind Ranch, LLC, Only  
  X   Affects All Debtors.

**MOTION TO APPROVE COMPROMISE  
 BETWEEN TRUSTEE, THE OFFICIAL  
 COMMITTEE OF UNSECURED  
 CREDITORS, AND LEHMAN  
 COMMERCIAL PAPER INC., AS  
 ADMINISTRATIVE AGENT FOR FIRST  
 LIEN LENDERS; AND MEMORANDUM OF  
 POINTS AND AUTHORITIES; AND  
 DECLARATION OF ALFRED H. SIEGEL IN  
 SUPPORT**

**DATE: November 3, 2009**  
**TIME: 10:30 a.m.**  
**PLACE: Courtroom 5A**  
**411 W. Fourth St.**  
**Santa Ana, CA 92701**

## TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. INTRODUCTION.....	1
4	II. BACKGROUND.....	2
5	A. General Background.....	2
6	B. Significant Post-Petition Events.....	3
7	1. The LCPI Stay Relief Motions.....	3
8	2. Trustee's Use Of Cash Collateral.....	3
9	C. Pre-Petition Events Giving Rise to Claims Against LCPI.....	4
10	1. The First And Second Lien Credit Agreement.....	5
11	2. The Third Lien Credit Agreement.....	6
12	3. The Debtors' Alleged Defaults Under The Lien Credit	
13	Agreements.....	6
14	III. PROPOSED SETTLEMENT .....	7
15	IV. LEGAL ANALYSIS .....	11
16	A. The Probability Of Success In The Litigation .....	12
17	B. The Difficulties To Be Encountered In The Matter Of Collection.....	14
18	C. The Complexity, Expense, Inconvenience, and Delay.....	14
19	D. The Paramount Interests Of Creditors .....	15
20	V. CONCLUSION .....	17
21	DECLARATION OF ALFRED H. SIEGEL .....	18
22		
23		
24		
25		
26		
27		
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**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

<i>In re A &amp; C Props.</i> , 784 F.2d 1377 (9th Cir. 1986) .....	12
<i>In re America West Airlines, Inc.</i> , 214 B.R. 382 (Bankr. D. Ariz. 1997) .....	12
<i>In re Hermitage Inn, Inc.</i> , 66 B.R. 71 (Bankr. D. Colo. 1986) .....	12
<i>In re Mickey Thompson Entertainment Group, Inc.</i> , 292 B.R. 415 (B.A.P. 9th Cir. 2003) .....	12
<i>In re Schmitt</i> , 215 B.R. 417 (B.A.P. 9th Cir. 1997) .....	12
<i>In re World Health Alternatives, Inc.</i> , 344 B.R. 291 (Bankr. D. Del. 2006) .....	12

**STATUTES**

11 U.S.C. § 363(c) .....	3, 4
11 U.S.C. § 363(f) .....	16
11 U.S.C. § 1123(a)(5)(D) .....	8

**RULES**

Federal Rule of Bankruptcy Procedure 9019(a) .....	11, 12
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1 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE:**

2 Alfred H. Siegel ("Trustee"), the chapter 11 trustee of the jointly administered  
3 estates of LBREP/L-SunCal Master I, LLC (the "Parent Debtor"), and LBREP/L-SunCal  
4 McAllister Ranch, LLC, LBREP/L-SunCal McSweeny Farms, LLC, and LBREP/L-SunCal  
5 Summerwind Ranch, LLC (collectively, the "Subsidiary Debtors," and together with the  
6 Parent Debtor, the "Debtors"), submits this Motion (the "Motion") to Approve Compromise  
7 Between Trustee, the Official Committee of Unsecured Creditors (the "Committee"), and  
8 Lehman Commercial Paper Inc., as First Lien Administrative Agent for the First Lien  
9 Lenders ("LCPI").<sup>1</sup> In support of the Motion, Trustee submits the following memorandum  
10 of points and authorities, and the Declaration of Alfred H. Siegel (the "Siegel Declaration").

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12  
13 **I. INTRODUCTION**

14 By this Motion, Trustee seeks approval of a term sheet (the "Term Sheet") globally  
15 resolving the disputes existing between Trustee, the Committee, and LCPI. Approval of  
16 the Term Sheet will settle the estates' claims against LCPI and resolve LCPI's stay relief  
17 proceeding, thereby saving the estates significant administrative expense and eliminating  
18 the risk associated with litigation. Under the Term Sheet, the estates will immediately  
19 receive \$6.5 million in cash to administer these cases, preserve estate property, and  
20 pursue other litigation, and the potential to recover significant funds in the future for  
21 distribution to unsecured trade creditors. Moreover, by resolving the disputes between  
22 Trustee and LCPI, the Term Sheet will clear the way for Trustee to propose a chapter 11  
23 plan with the support of LCPI, and to expeditiously pursue confirmation of the same.  
24 Trustee believes that the proposed settlement is in the best interests of the bankruptcy

25  
26  
27 <sup>1</sup> Unless the context clearly requires otherwise, LCPI means and refers to LCPI only in its capacity as  
28 administrative agent.

1 estates. Accordingly, Trustee requests that the Court enter an order approving the Term  
2 Sheet.

3  
4 **II. BACKGROUND**

5 **A. General Background**

6 On or about September 10 and 11, 2008 (the "Petition Dates"), involuntary petitions  
7 under chapter 11 of the Bankruptcy Code were filed against the Debtors. The Debtors'  
8 bankruptcy cases are being jointly administered pursuant to an order of this Court entered  
9 on November 13, 2008. On or about October 29, 2008, the Court entered an order  
10 approving Alfred H. Siegel's appointment as the chapter 11 trustee.

11 The Parent Debtor is a holding company, established to the fund the real estate  
12 development projects owned by each of its four operating subsidiaries, *i.e.*, the Subsidiary  
13 Debtors and LBREP/L-SunCal Patterson Ranch, LLC. Ninety percent (90%) of the Parent  
14 Debtor is owned by LBREP Lakeside SC Master I, LLC ("Lehman Lakeside"), which is an  
15 affiliate of Lehman Bros. Real Estate Partners, LP ("LBREP").<sup>2</sup> The remaining equity  
16 interests in the Parent Debtor are owned by SCC Ranch Ventures, LLC, which is an  
17 affiliate of SCC Acquisitions, Inc. d/b/a SunCal Companies. Lehman Lakeside is the  
18 managing member of the Parent Debtor.

19 The Parent Debtor's primary asset, other than cash, is its interests in its operating  
20 subsidiaries. The Parent Debtor is the sole equity member of the Subsidiary Debtors,  
21 each of which, in turn, owns a real estate development project bearing the same name  
22 (collectively, the "Properties"). The Parent Debtor also has cash in accounts with a  
23 current aggregate balance of approximately \$16 million, which funds were formerly held in  
24 a "Development Account" established under the LCPI loan documents. As discussed in  
25 further detail below, LCPI asserts a first priority lien against the Properties and the Parent  
26

27 <sup>2</sup> Both LCPI and LBREP are affiliates of Lehman Brothers Holding, Inc. ("LBHI"). LCPI and LBHI are  
28 debtors in possession in jointly administered chapter 11 cases (Lead Case No. 08-13555) pending before  
the United States Bankruptcy Court for the Southern District of New York. Lehman Lakeside is not a debtor.

1 Debtor's cash for the full amount of the loans to the Parent Debtor. Trustee estimates that  
2 there is approximately \$60 million in non-lien lender debt based upon the Debtors  
3 schedules and claims filed in the cases.

4 **B. Significant Post-Petition Events**

5 **1. The LCPI Stay Relief Motions**

6 On October 2, 2008, LCPI filed four motions for relief from the automatic stay, one  
7 in each individual case (the "LCPI Stay Relief Motions"), which were originally scheduled  
8 for hearing on October 28, 2008. The Court continued the hearing to November 20, 2008,  
9 to allow Trustee an opportunity to analyze the motions and prepare a response, if  
10 necessary, thereto. Both Trustee and the Committee opposed the LCPI Stay Relief  
11 Motions, in part, because the amount and validity of LCPI's security interests were in  
12 dispute. Following a hearing on October 28, 2008, the Court set the LCPI Stay Relief  
13 Motions for an evidentiary hearing on February 6, 2009 (the "Evidentiary Hearing"). The  
14 Court also set certain related deadlines to designate experts, file expert reports, and file  
15 trial briefs. To prepare for the Evidentiary Hearing, Trustee sought discovery from LCPI  
16 and certain third parties.

17 Trustee and LCPI entered into multiple stipulations to continue the Evidentiary  
18 Hearing and extend the related deadlines, which were approved by the Court, and the  
19 Evidentiary Hearing was ultimately continued to June 19, 2009. However, due to the  
20 settlement discussions between Trustee and LCPI, the parties entered into a stipulation to  
21 take the Evidentiary Hearing off calendar, and to suspend the related deadlines and  
22 discovery, subject to the parties' rights to re-notice and/or reinstate the same. Absent  
23 approval of the Term Sheet, Trustee expects that LCPI will re-notice the Evidentiary  
24 Hearing and seek stay relief to foreclose on its interests in the Properties.

25 **2. Trustee's Use Of Cash Collateral**

26 On November 4, 2008, the Trustee filed an Emergency Motion for Order  
27 Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c) (the "Emergency  
28 Motion"), which was opposed by LCPI. The Emergency Motion was heard on November

1 6, 2008. On November 12, 2008, the Court entered an order granting the Emergency  
2 Motion, and authorizing the use of cash collateral through November 20, 2008, pursuant  
3 to a very limited budget allowing use of the cash on hand to pay the expenses necessary  
4 to preserve the Properties. On December 8, 2008, the Court entered an Order  
5 Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363(c) From November 21,  
6 2008 Through February 28, 2009. Thereafter, Trustee and LCPI stipulated to the use of  
7 cash collateral from March 1, 2009, through March 31, 2009, and then from April 1, 2009,  
8 through June 30, 2009, on the same terms and conditions as in the Final Order, subject to  
9 a reservation of rights, and with such approval to use cash collateral deemed over LCPI's  
10 continuing objection. The stipulations were approved by orders of this Court.

11 On July 2, 2009, Trustee filed and served a Motion for Order Authorizing Use of  
12 Cash Collateral Through September 30, 2009 (the "Cash Collateral Motion"), and an  
13 Application for Order Shortening Time on the Cash Collateral Motion (the "OST  
14 Application"). On that same date, the Court entered an order granting the OST  
15 Application, and setting the hearing on the Cash Collateral Motion on July 16, 2009. On  
16 July 16, 2009, the Court authorized the interim use of cash collateral pending a final  
17 hearing on August 4, 2009. Prior to the final hearing, LCPI and Trustee stipulated to the  
18 use of cash collateral through September 30, 2009, on substantially the same terms and  
19 conditions as in prior cash collateral stipulations and orders of this Court, to allow Trustee  
20 to use the cash on hand only as necessary to preserve and maintain the value of the  
21 Properties and protect these estates from liability. LCPI and Trustee have further  
22 stipulated to the use of cash collateral through October 31, 2009. As discussed in further  
23 detail below, the Term Sheet enables Trustee to use cash collateral to fully administer  
24 these estates, as opposed to only to preserve the Properties.

25 **C. Pre-Petition Events Giving Rise to Claims Against LCPI**

26 Following his appointment, and in connection with the LCPI Stay Relief Motions,  
27 Trustee and his professionals analyzed the pre-petition transactions between LCPI and  
28 the Debtors. Trustee determined that the estates hold certain potential claims against



1 LCPI. The following is a summary of the relevant facts giving rise to the estates' potential  
2 claims. LCPI has indicated that it strongly disputes each of Trustee's claims and  
3 assertions.

4 **1. The First And Second Lien Credit Agreement**

5 The Parent Debtor, as borrower, entered into three Lien Credit Agreements with  
6 LCPI (collectively, the "Lien Credit Agreements"). Pursuant to the First and Second Lien  
7 Credit Agreements, which were entered into on or around January 19, 2006, the Parent  
8 Debtor borrowed a total of \$320 million (collectively, the "January 2006 Loans") as follows:  
9 (1) a revolving credit facility of \$75 million and term loan facility of \$160 million under the  
10 First Lien Credit Agreement; and (2) a \$85 million term loan facility under the Second Lien  
11 Credit Agreement. The Parent Debtor's obligations under First and Second Lien Credit  
12 Agreements were guaranteed by the Subsidiary Debtors, and these upstream guaranties  
13 were secured by first and second liens against the Properties. The Subsidiary Debtors  
14 also contributed approximately \$45 million to repay the existing financing secured by the  
15 Properties. LCPI was a lender under the January 2006 Loans, and acted as the sole  
16 administrative agent, and Lehman Brothers, Inc. ("Lehman Brothers"), served as the  
17 advisor, sole lead arranger and syndication agent. Later, Gramercy Warehouse Funding  
18 I, LLC, replaced LCPI as the administrative agent under the Second Lien Credit  
19 Agreement.

20 Although the Debtors incurred secured debt totaling \$320 million, a significant  
21 portion of proceeds from the January 2006 Loans was not available to the Debtors for  
22 operations and the development of the Properties. Specifically, pursuant to the First Lien  
23 Credit Agreement, the sum of \$144 million was paid directly from escrow to the Parent  
24 Debtor's equity owners (the "Dividend"). The sum of \$10.6 million was paid from escrow  
25 to LCPI for its arrangement and administration fee. Approximately \$62 million was  
26 disbursed to Lehman Ali, Inc., to repay previous loans to the Subsidiary Debtors.  
27 Approximately \$25 million was immediately set aside by escrow to fund a "Development  
28 Account," which the Debtors were not permitted to use, but served as the lenders'

1 collateral. Thus, over \$240 million of the \$320 million loaned to the Parent Debtor, and  
2 upon which the Debtors paid interest, was either disbursed directly to LCPI or other  
3 entities, or was otherwise unavailable to the Parent Debtor.

## 4                   2.       The Third Lien Credit Agreement

5           On February 6, 2007, a Third Lien Credit Agreement was entered into by the  
6 Parent Debtor, which provided for an additional \$75 million term loan (the "February 2007  
7 Loan," collectively with the January 2006 Loans, the "Loans"), guaranteed again by the  
8 Subsidiary Debtors and secured by third priority liens against the Properties. From the  
9 \$75 million loaned to the Parent Debtor under the Third Lien Credit Agreement, \$50  
10 million was paid out of escrow directly to LCPI to pay down the obligations under the First  
11 Lien Credit Agreement. Just as with the January 2006 Loans, LCPI was a lender and  
12 served as the administrative agent, and Lehman Brothers served as advisor, sole  
13 arranger and syndication agent. Square Mile Structured Debt (One), LLC, and Square  
14 Mile Structured Debt (Two), LLC, collectively, replaced LCPI as the administrative agent  
15 under the Third Lien Credit Agreements.

## 16                   3.       The Debtors' Alleged Defaults Under The Lien Credit 17                   Agreements

18           Pursuant to a Fourth Amendment and Waiver to the First Lien Credit Agreement  
19 dated January 31, 2008 (the "Amendment"), the Parent Debtor was required to increase  
20 the cash in the Development Account from \$25 million to \$50 million within 60 days (*i.e.*,  
21 by March 31, 2008). However, the Parent Debtor was unable to increase the amount of  
22 funds deposited in the Development Account and, as result, on March 31, 2008, LCPI  
23 declared a default. LCPI also declared defaults because: (a) the Debtors missed an  
24 interest payment; (b) the Debtors failed to timely deliver financial statements; and (c) the  
25 Debtors failed to pay a \$100,000 administrative fee and maintain the necessary liquidity  
26 requirements. Based on the alleged defaults, LCPI commenced non-judicial foreclosure  
27 proceedings, which were stayed by the commencement of these cases. Trustee believes  
28 that each of the defaults declared by LCPI were arguably caused by LCPI's conduct or

1 were within the control of its affiliate, Lehman Lakeside. LCPI strongly disputes this and  
2 points to the Lien Credit Agreements, which it asserts were negotiated at arms-length.

3 Based on the facts outlined above, Trustee and the Committee believe that the  
4 estates have claims against LCPI to: (1) equitably subordinate the claims of LCPI and  
5 cause the liens securing LCPI's claims to be transferred to the estates; (2) avoid the  
6 security interests held by LCPI against the Properties as fraudulent transfers and preserve  
7 those security interests for the benefit of the estates; and (3) recover damages against  
8 LCPI for lender liability. The estates' alleged claims against LCPI are more fully set out in  
9 Trustee's opposition to the LCPI Stay Relief Motions, a true and correct copy of which is  
10 attached hereto as Exhibit "3." LCPI advised Trustee as to the basis for its defense and  
11 contends that it will prevail on any action on the estates' claims. LCPI further contends  
12 that it will also prevail on the LCPI Stay Relief Motions and that it has the right to foreclose  
13 on all real and personal property of the estates, which serves as LCPI's collateral.

14  
15 **III. PROPOSED SETTLEMENT**

16 In an effort to avoid the cost and uncertainty associated with litigating the claims  
17 against LCPI and the LCPI Stay Relief Motions, Trustee, the Committee and LCPI have  
18 entered into a term sheet resolving their disputes. A true and correct copy the Term  
19 Sheet is attached hereto as Exhibit "1."<sup>3</sup> The material terms of the settlement are as  
20 follows:

- 21 1. Allowance of LCPI Claim. The claim of first-position secured lenders of the  
22 Debtor (the "1<sup>st</sup> Lien Lenders"), for which LCPI serves as the administrative  
23 agent, will be allowed in the aggregate amount of \$230,006,233.98, plus  
24 accrued and unpaid interest through the petition date and legal fees. The  
25 secured portion of the claim will be allowed in the amount of 1<sup>st</sup> Lien  
26

27 <sup>3</sup> If there is a conflict between the summary of the compromise set forth in this Motion and the Term  
28 Sheet, the provisions of the Term Sheet shall control.

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- 1 Lenders' final credit bid for the Properties as discussed below, and the  
2 remainder will be deemed an allowed unsecured claim.
- 3 2. Distributions on Settlement Effective Date. Trustee will retain \$6.5 million  
4 from the funds originally held in the Development Account (the  
5 "Development Account Funds"). Of this amount: (a) \$3 million (the  
6 "Administrative Funds") will be available for the administrative expenses of  
7 the estates and for potential distribution to non-lender general unsecured  
8 creditors; (b) \$1.5 million (the "Senior Lien Reserve Funds") will be placed in  
9 a segregated account subject to the 1st Lien Lenders' liens to be used in  
10 connection with the resolution of the senior lien claims (as discussed below);  
11 and (c) \$2.0 million (the "Remaining Development Funds") will be retained to  
12 pay the operating expenses of the Properties pursuant to an approved  
13 budget. The balance of the Development Account Funds (net of the \$6.5  
14 million retained by Trustee) will be transferred to the 1<sup>st</sup> Lien Lenders, and  
15 will be included in the calculation of the 1<sup>st</sup> Lien Lenders' allowed secured  
16 claim.
- 17 3. Sale of Properties Under the Plan. The Properties will be sold pursuant to a  
18 plan under 11 U.S.C. § 1123(a)(5)(D) in accordance with the bidding  
19 procedures attached to the Term Sheet as Exhibit "B." The 1<sup>st</sup> Lien Lenders  
20 shall be the initial bidder with an initial credit bid in the aggregate amount of  
21 \$62 million, and shall be allowed to increase their credit bid up to the entire  
22 amount of their allowed claim.
- 23 4. Resolution of Senior Liens. Promptly after the "Settlement Effective Date,"  
24 the parties will cooperate to file estimation motions to determine whether  
25 there are liens superior to the liens of the 1<sup>st</sup> Lien Lenders (e.g., mechanics  
26 liens) against the Properties (the "Senior Liens"). Trustee shall afford the  
27 title insurer, Fidelity National Title Insurance Company ("Fidelity"), a  
28 reasonable opportunity to participate in the estimation process. To the

1 extent that there are liens determined to be senior liens and that Fidelity has  
2 not accepted the defense and payment of such senior liens, Trustee will  
3 negotiate for the release of such liens with such lienholders and/if  
4 necessary, commence litigation against the alleged lienholders. Trustee  
5 may use the Senior Lien Reserve Fund in connection with such efforts. If  
6 Trustee is able to sell the Properties free and clear of all liens, then the  
7 estates shall retain the balance of the Senior Lien Reserve Fund. If not, the  
8 balance will be transferred to the 1<sup>st</sup> Lien Lenders, however, Trustee will  
9 retain the Administrative Funds in any event.

10 5. Distributions Pursuant to the Plan.

11 a. Distributions of Other Recoveries. The plan will provide that all  
12 proceeds recovered from sources other than the sale of the  
13 Properties (e.g., from fraudulent transfer litigation) ("Other  
14 Recoveries"), after the payment of administrative and priority  
15 unsecured claims, will be split 50/50 between the 1<sup>st</sup> Lien Lenders  
16 and the holders of allowed claims other than the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> lien  
17 lenders (the "Trade Creditors") (on an administratively consolidated  
18 pro rata basis) until the Trade Creditors are paid in full. To the extent  
19 necessary to effectuate the foregoing distribution scheme, the 1<sup>st</sup> Lien  
20 Lenders will assign the estates their allowed unsecured claims and  
21 their rights under the Amended and Restated Intercreditor  
22 Agreement among the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> lien lenders (the "Intercreditor  
23 Agreement").<sup>4</sup>

24  
25 <sup>4</sup> A true and correct copy of the Intercreditor Agreement is attached hereto as Exhibit "2." The  
26 Intercreditor Agreement provides that any payments to the 2<sup>nd</sup> lien lenders (the "2<sup>nd</sup> Lien Lenders") and the  
27 3<sup>rd</sup> lien lenders (the "3<sup>rd</sup> Lien Lenders") be paid over to the 1<sup>st</sup> Lien Lenders, until the 1<sup>st</sup> Lien Lenders are  
28 paid in full. (See Ex. 2 at §§ 2.1, 4.2.) The Intercreditor Agreement also provides that the 2<sup>nd</sup> and 3<sup>rd</sup> Lien  
Lenders cannot benefit from avoidance of the 1<sup>st</sup> Lien Lender's lien, rather, any proceeds received by the 2<sup>nd</sup>  
and 3<sup>rd</sup> Lien Lenders as a result of the avoidance must be paid over to the 1<sup>st</sup> Lien Lenders. (See *id.* at  
§ 6.5.) For this reason, via the assignment of the 1<sup>st</sup> Lien Lenders' unsecured claim, any cash payable to

(Continued...)

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b. Trustee's Participation in Gross Recovery. Pursuant to the plan, from the subsequent disposition of the Properties by the 1<sup>st</sup> Lien Lenders, Trustee will receive the lesser of 3.5% of the "Gross Recovery" by the 1<sup>st</sup> Lien Lenders, and the amount necessary to pay the allowed claims of the Trade Creditors (the "Trustee Participation"). The Trustee Participation shall be distributed to non-lender creditors.

6. Trustee Loss Collateral. On the Settlement Effective Date, LCPI on behalf of the 1<sup>st</sup> Lien Lenders will deliver to Trustee cash or irrevocable letters of credit acceptable to Trustee in the aggregate amount of \$500,000 (the "Trustee Loss Collateral"). The Trustee Loss Collateral will be used to cover proven losses that occur during the period from the Settlement Effective Date to the date of transfer of title to the Properties (the "Trustee Maintenance Period") based on claims of simple negligence or strict liability in connection with the ownership, operation, maintenance and management of the Properties, to the extent such losses are not covered by insurance and subject to a formula set forth in section G of the Term Sheet. Upon a termination event or the effective date of the plan, Trustee will deliver any remaining Trustee Loss Collateral to LCPI.

7. Releases. LCPI on behalf of the 1<sup>st</sup> Lien Lenders immediately releases Trustee (and not the estates) in his trustee and individual capacity with respect to all claims related to the subject matter of the Term Sheet or actions taken with respect to the Properties arising prior to the transfer of title to the Properties to the 1<sup>st</sup> Lien Lenders or any third party, except to the extent of any gross negligence or gross malfeasance. Upon the effective date of the plan or if there is a "Termination Event" (as defined below),

(...Continued)

the 2<sup>nd</sup> and 3<sup>rd</sup> Lien Lenders would be paid to the estates up to the full amount of the 1<sup>st</sup> Lien Lenders' unsecured claim. The 2<sup>nd</sup> and 3<sup>rd</sup> Lien Lenders are no worse off because the cash disbursed to the estates would have otherwise been paid to the 1<sup>st</sup> Lien Lenders as required by the Intercreditor Agreement.

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Trustee and the estates, on the one hand, and LCPI and the 1<sup>st</sup> Lien Lenders, on the other hand, will mutually release each other from all claims (other than the allowed claims of the 1<sup>st</sup> Lien Lenders discussed above). The Term Sheet does not provide for releases against Lehman Lakeside, SCC Ranch Ventures, LLC, SCC Acquisitions, Inc., or SCC Acquisitions, LLC.

8. Termination Event. If a final Plan confirmation order is not in effect by January 15, 2010 (or extended pursuant to an agreed upon extension of the original date), or if the settlement otherwise terminates by its own terms, then: (a) the 1<sup>st</sup> Lien Lenders will be granted relief from the automatic stay to immediately foreclose on the Properties, and Trustee (and any party claiming by or through any of the Debtors) shall be prohibited from interfering with such foreclosure; (b) Trustee will retain the Administrative Funds free from the secured claims of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> lien lenders; (c) the 1<sup>st</sup> Lien Lenders will retain the balance of the Development Account Funds; (d) Trustee shall immediately pay over to the 1<sup>st</sup> Lien Lenders the unused portion of the Senior Lien Reserve Funds and the Remaining Development Funds, and the Trustee Loss Collateral free of all claims and interests; (e) the parties will be deemed to have mutually released each other as discussed above.

#### IV. LEGAL ANALYSIS

Federal Rule of Bankruptcy Procedure ("Rule") 9019(a) provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

1 "The bankruptcy court has great latitude in approving compromising agreements."  
2 See *In re A & C Props.*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). In approving a  
3 settlement agreement, the court must find that it is fair and equitable, and the product of  
4 good faith negotiations. See *id.* To this end, the court must consider the following criteria:

5 (a) the probability of success in the litigation; (b) the difficulties,  
6 if any, to be encountered in the matter of collection; (c) the  
7 complexity of the litigation involved, and the expense,  
inconvenience and delay necessarily attending it; (d) the  
paramount interest of the creditors and a proper deference to  
their reasonable views in the premises.

8 *Id.*

9 Generally speaking, the court may defer to a trustee's business judgment in  
10 deciding whether to settle a matter. See *In re Mickey Thompson Entertainment Group,*  
11 *Inc.*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003). The court need not conclude that the  
12 proposed settlement is the best possible compromise, but only that the settlement is  
13 "within the reasonable range of litigation possibilities." See *In re World Health*  
14 *Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). Similarly, the court need not,  
15 and should not conduct a "mini-trial" on the compromised claims but simply determine that  
16 disputes related to those claims exist. See *In re Schmitt*, 215 B.R. 417, 423 (B.A.P. 9th  
17 Cir. 1997) ("When assessing a compromise, courts need not rule upon disputed facts and  
18 questions of law, but rather only canvass the issues. A mini trial on the merits is not  
19 required."); see also *In re Hermitage Inn, Inc.*, 66 B.R. 71, 72 (Bankr. D. Colo. 1986)  
20 ("[T]he court's assessment does not require resolution of the issues, but only their  
21 identification, so that the reasonableness of the settlement may be evaluated."). It is  
22 enough that the court conclude the probability of success is uncertain. See, e.g., *In re*  
23 *America West Airlines, Inc.*, 214 B.R. 382, 386 (Bankr. D. Ariz. 1997).

24 **A. The Probability Of Success In The Litigation**

25 As discussed above, Trustee believes that the estates have claims to equitably  
26 subordinate LCPI's secured claims, avoid LCPI's liens, and to recover damages against  
27 LCPI for lender liability (collectively, the "Estate Claims"). Trustee believes that these  
28 claims have merit. However, Trustee's success will require the resolution of a number of



1 legal and factual issues by this Court, all of which are disputed by LCPI and the 1<sup>st</sup> Lien  
2 Lenders. In fact, LCPI and certain of the 1<sup>st</sup> Lien Lenders disputed a number of Trustee's  
3 allegations in connection with the LCPI Stay Relief Motions. For example, disputes exist  
4 regarding the relationship between LCPI and Lehman Lakeside, whether LCPI's pre-  
5 petition conduct was inequitable or otherwise actionable and whether such conduct, even  
6 if found inequitable, is attributable to the other 1<sup>st</sup> Lien Lenders, and whether the Debtors  
7 were insolvent or undercapitalized at the time or because of the Loans and the related  
8 transfers and encumbrances.<sup>5</sup> Thus, Trustee's success on the Estate Claims is, at best,  
9 uncertain.

10 For the Estate Claims to have value Trustee must also succeed in defending  
11 against the LCPI Stay Relief Motions. As LCPI is a debtor in its own bankruptcy case, any  
12 redress for LCPI's alleged misconduct (and, thus, the repayment of creditors) would likely  
13 have to come from the cash on hand or the value in the Properties (as opposed to the  
14 payment of money damages), which is not possible if LCPI obtains stay relief and is able  
15 to foreclose. In opposition to the LCPI Stay Relief Motions, Trustee argued that, among  
16 other things, that stay relief was not appropriate because the amount and validity of  
17 LCPI's secured claims were in dispute. However, the Court could conclude that,  
18 assuming Trustee has viable claims against LCPI, such claims should not be considered  
19 in the context of stay relief proceedings and could grant the LCPI Stay Relief Motions,  
20 which would render the estates' equitable subordination and avoidance claims  
21 meaningless and without value to the estates.

22 In short, Trustee's success on the Estate Claims and in defending the LCPI Stay  
23 Relief Motions is certainly not a given. Rather, Trustee must prevail on a number of  
24

---

25 <sup>5</sup> LCPI and the 1st Lien Lenders contend, and have contended, that the Debtors' inability to satisfy its  
26 creditors is the result of the collapse of the credit market generally and the real estate market in southern  
27 California in particular, all of which and the severity of which could not have been reasonably contemplated  
28 when the Loans were made. LCPI and the 1st Lien Lenders contend that there was nothing inequitable in  
connection with the loan transactions which were governed and controlled by the loan agreements between  
the parties. Accordingly, LCPI and the 1st Lien Lenders contend that the overriding predicate of the estates'  
potential claims simply cannot be true: at the time the Loans were made, the Debtors were not insolvent and  
were not unreasonably capitalized.

1 disputed issues of fact and law, which this Court has yet to resolve. Accordingly, this  
2 factor supports approval of the Term Sheet.

3 **B. The Difficulties To Be Encountered In The Matter Of Collection**

4 Trustee will likely be unable to collect money damages from LCPI. LCPI is a debtor  
5 in its own bankruptcy case. Thus, even if Trustee obtains a judgment against LCPI, it will  
6 simply result in an unsecured claim, and he may be able to recover only a small portion, if  
7 any, of the amount awarded. To the extent that Trustee seeks to subordinate LCPI's  
8 secured claim or avoid LCPI's liens, collectibility is not an issue. However, if LCPI obtains  
9 stay relief, the estates' equitable subordination and avoidance claims would essentially be  
10 meaningless, and Trustee will be unable to recover any value for the estates on account  
11 of the Estate Claims. Thus, Trustee faces difficulties in both collecting money damages  
12 from LCPI and preserving the claims to recover value from LCPI's collateral for the benefit  
13 of the estates. Accordingly, this fact supports approval of the Term Sheet.

14 **C. The Complexity, Expense, Inconvenience, and Delay**

15 The Estates Claims will be difficult to prove and expensive to litigate. The claims  
16 against LCPI involve numerous complex and disputed issues of fact and law surrounding  
17 the loan transactions between the Debtors and LCPI and LCPI's conduct related thereto,  
18 and the financial condition of the Debtors. The litigation likely will require significant  
19 discovery and a lengthy drawn-out trial. Moreover, Trustee likely will need to seek stay  
20 relief in LCPI's bankruptcy case to pursue the Estate Claims, resulting in additional  
21 expense and delay. The Term Sheet also resolves the LCPI Stay Relief Motions, which,  
22 in the absence of a settlement, LCPI would continue to pursue. The LCPI Stay Relief  
23 Motions were set for an evidentiary hearing, and will necessitate discovery by Trustee.  
24 Without the proposed settlement, Trustee would also likely face continued objections by  
25 LCPI to the use of cash collateral to preserve the Properties and administer these

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1 estates.<sup>6</sup> Thus, the Term Sheet resolves numerous disputes, thereby saving the estates  
2 substantial administrative expense.

3 Litigation related to the Estate Claims and the LCPI Stay Relief Motions will delay  
4 the conclusion of the Debtors' bankruptcy case. Trustee would be forced to devote  
5 significant time and energy to pursuing the Estate Claims and defending against the LCPI  
6 Stay Relief Motions, time that could otherwise be devoted to pursuing confirmation of a  
7 plan. Absent the proposed settlement, a plan submitted by Trustee and/or the Committee  
8 would likely be vigorously opposed by LCPI and the 1<sup>st</sup> Lien Lenders. Moreover,  
9 distributions under any nonconsensual plan would likely be based on the outcome of the  
10 Estate Claims, which could take significant time to resolve. Approval of the Term Sheet,  
11 on the other hand, will clear the way for Trustee and the Committee to immediately  
12 prepare and propose a plan with the support of LCPI and move expeditiously towards  
13 confirmation, providing creditors with some certainty regarding the outcome of these  
14 cases. Accordingly, this factor supports approval of the Term Sheet.

15 **D. The Paramount Interests Of Creditors**

16 The Term Sheet will provide the estates with immediate funds and the potential for  
17 substantial additional cash in the future. First, Trustee will immediately receive \$6.5  
18 million. Of this sum, \$3.0 million is guaranteed to the estates and is available to  
19 administer these estates and for potential distribution to creditors, \$2.0 million is available  
20 to preserve the Properties, and \$1.5 million is to be used to settle potential Senior Liens.<sup>7</sup>  
21 Second, any proceeds from the litigation to avoid and recover the Dividend, which could  
22 total approximately \$144 million, or from other avoidance actions will be split 50/50 with  
23 LCPI. Third, via the "Trustee's Participation," the estates are entitled to receive cash from

24  
25  
26 <sup>6</sup> If the Trustee were to pursue the Estate Claims against LCPI, he would need to maintain the  
Properties in the meantime. With erosion and dust control, security and other necessary expenditures, the  
Trustee would be required to spend several hundred thousand dollars a month, and LCPI asserts a lien in all  
the cash on hand.

27 <sup>7</sup> However, the estates are entitled to retain the balance of the \$1.5 million Senior Lien Reserve Fund,  
28 if Trustee is able to sell the Property free and clear of all liens.

1 LCPI's subsequent disposition of the Properties in the lesser amount of (a) unpaid allowed  
2 trade claims, or (b) 3.5% of the recovery by the 1<sup>st</sup> Lien Lenders.

3 Without the proposed settlement, the non-lender unsecured creditors could receive  
4 nothing or substantially less. Again, Trustee's success on the Estate Claims and in  
5 defending against the LCPI Stay Relief Motions is uncertain, and there are numerous  
6 complex issues that impact the unsecured creditors potential distribution. If Trustee is  
7 unsuccessful, any cash or value in the Properties would be transferred solely to the 1<sup>st</sup>  
8 Lien Lenders on account of their secured claims.<sup>8</sup> To the extent that Trustee is successful  
9 in avoiding LCPI's lien, but not subordinating LCPI's secured claim, LCPI would still hold  
10 significant unsecured claims against the estates and be entitled to share in any  
11 distributions to unsecured creditors on a *pro rata* basis. Similarly, the 2<sup>nd</sup> and 3<sup>rd</sup> Lien  
12 Lenders would be entitled to distributions on account of any unsecured deficiency claims  
13 (although such disbursements would be paid to LCPI until paid in full). Moreover, it is  
14 likely that, absent substantive consolidation, any unencumbered cash held by the Parent  
15 Debtor would first have to be used to repay the Parent Debtor's creditors, which would  
16 include the claims of the lien lenders, including any unsecured or subordinated claims of  
17 LCPI, before such cash could be used to repay the Subsidiary Debtors' creditors. Thus,  
18 the proposed settlement not only provides these estates with immediate cash and the  
19 potential for significant distributions in the future, but also provides a mechanism to  
20 disburse those funds to the unsecured trade creditors.

21 In sum, the proposed settlement is fair and equitable, and in the best interests of  
22 the estates. The Term Sheet resolves multiple proceedings, thereby saving the estates  
23 significant administrative expense. The Term Sheet entitles the estates to \$6.5 million to  
24 administer these cases and preserve the Properties. Of this sum, the estates are  
25 guaranteed \$3.0 million upon approval of the Tern Sheet, even if the proposed plan is not  
26

27 <sup>8</sup> Sale of the Properties under 11 U.S.C. § 363(f) would likely result in a recovery far less than the  
28 amount owed to LCPI and the 1<sup>st</sup> Lien Lenders. Moreover, Trustee's efforts to sell the Properties would  
likely be opposed by the lien lenders attempting to credit bid their claims.

1 confirmed. The Term Sheet also entitles the estates to significant additional sums from  
2 any subsequent disposition of the Properties by LCPI or from the pursuit of avoidance  
3 actions against third parties. The estates are not settling all claims arising from the facts  
4 outlined above, but only the estates' claims against LCPI and the 1<sup>st</sup> Lien Lenders. The  
5 estates are retaining their claims against other third parties to avoid and recover the  
6 Dividend, and, due to the proposed settlement, the estates will have funds to pursue such  
7 claims. Therefore, there is a real possibility that the estates will receive significant cash in  
8 the future to distribute to unsecured trade creditors. Accordingly, Trustee respectfully  
9 requests that the Court approve the Term Sheet.

10  
11 **V. CONCLUSION**

12 Based on the foregoing, Trustee respectfully requests that the Court approve the  
13 Term Sheet, and such other and further relief as the Court deems just and proper.

14  
15 Dated: October 9, 2009

WEILAND, GOLDEN,  
SMILEY, WANG EKVALL & STROK, LLP

16  
17 By: 

18 EVAN D. SMILEY  
19 ROBERT S. MARTICELLO  
20 Attorneys for Alfred H. Siegel  
21 Chapter 11 Trustee,  
22  
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**DECLARATION OF ALFRED H. SIEGEL**

I, Alfred H. Siegel, declare as follows:

1. I am the chapter 11 trustee of the of the jointly administered estates of LBREP/L-SunCal Master I, LLC, LBREP/L-SunCal McAllister Ranch, LLC, LBREP/L-SunCal McSweeny Farms, LLC, and LBREP/L-SunCal Summerwind Ranch, LLC. I make this declaration in support of the Motion to Approve Compromise Between Trustee, the Official Committee of Unsecured Creditors, and Lehman Commercial Paper, Inc., (the "Motion"). All terms as defined in the Motion are incorporated herein by this reference. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated, and, if called as a witness, I could and would competently testify with respect thereto.

2. Following my appointment, and in connection with the LCPI Stay Relief Motions, my professionals and I analyzed the pre-petition transactions between LCPI and the Debtors. Based on the facts outlined in the Motion related to the loan transactions between the Debtors and LCPI, I believe that the estates have meritorious claims against LCPI to: (1) equitably subordinate the claims of LCPI and cause the liens securing LCPI's claims to be transferred to the estates; (2) avoid the security interests held by LCPI against the Properties as fraudulent transfers and preserve those security interest for the benefit of the estates; and (3) recover damages against LCPI for lender liability.

3. In an effort to avoid the cost and uncertainty associated with litigating the Estate Claims and the LCPI Stay Relief Motions, I have entered into a term sheet with the Committee and LCPI to resolve our disputes. A true and correct copy the Term Sheet is attached hereto as Exhibit "1."

4. While I believe that the Estate Claims have merit, they will be difficult and costly to prove as I must prevail on multiple complex issues of fact and law, which are disputed by LCPI and the 1<sup>st</sup> Lien Lenders. Due to these numerous outstanding disputed issues, success on the Estate Claims is uncertain. Pursuit of the Estate Claims will

1 require significant discovery and a lengthy trial and, therefore, will take significant time to  
2 conclude and will result in significant administrative expense. Moreover, I will need to  
3 seek stay relief in LCPI's bankruptcy case to pursue the Estate Claims, which will result in  
4 additional expense and delay.

5       5. For the Estate Claims to have value I must also succeed in defending  
6 against the LCPI Stay Relief Motions, which in the absence of a settlement, LCPI would  
7 continue to pursue. As LCPI is a debtor in its own bankruptcy case, any redress for  
8 LCPI's alleged misconduct (and, thus, the repayment of creditors) would likely have to  
9 come from the cash on hand or the value in the Properties (as opposed to the payment of  
10 money damages), which is not possible if LCPI obtains stay relief and is able to foreclose.  
11 The Court could conclude that, assuming the estates have viable claims against LCPI,  
12 such claims should not be considered in the context of stay relief proceedings and could  
13 grant the LCPI Stay Relief Motions, which would render the estates' equitable  
14 subordination and avoidance claims meaningless.

15       6. Without the proposed settlement, I would also likely face continued  
16 objections by LCPI to the use of cash collateral to preserve the Properties and/or to  
17 administer these estates. Thus, the Term Sheet resolves numerous disputes, thereby  
18 saving the estates substantial administrative expense.

19       7. Litigation related to the Estate Claims and the LCPI Stay Relief Motions will  
20 delay the conclusion of the Debtors' bankruptcy case. If the Term Sheet is not approved,  
21 the Committee and I would be forced to devote significant time and energy to pursuing the  
22 Estate Claims and defending against the LCPI Stay Relief Motions, time that we could  
23 otherwise devote to pursuing confirmation of a plan. Moreover, absent the proposed  
24 settlement, any plan submitted by myself and/or the Committee would likely be opposed  
25 by LCPI and the 1<sup>st</sup> Lien Lenders. Distributions under any nonconsensual plan would  
26 likely be based on the outcome of the Estate Claims, which could take significant time to  
27 resolve. Approval of the Term Sheet, on the other hand, will enable the Committee and I  
28 to immediately prepare and propose a joint plan with the support of LCPI and to move

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1 expeditiously towards confirmation. Therefore, I believe that approval of the Term Sheet  
2 will help to move these cases forward towards a successful conclusion, and will provide  
3 creditors with some certainty regarding the outcome of these cases.

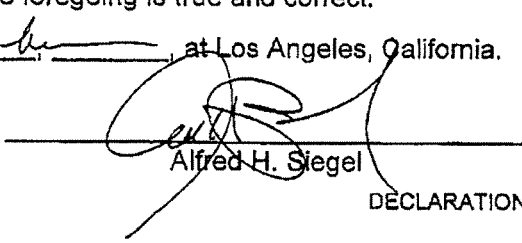
4 8. I believe that the Term Sheet will provide significant benefits to the estates.  
5 The Term Sheet entitles the estates to \$6.5 million to administer these cases and  
6 preserve the Properties. Of this sum, the estates are guaranteed \$3.0 million upon  
7 approval of the Term Sheet, even if the proposed plan is not confirmed. The Term Sheet  
8 also provides the estates with the potential to recover significant cash in the future from  
9 any avoidance action recoveries or the subsequent disposition of the Properties by LCPI,  
10 and a mechanism to distribute such cash to unsecured trade creditors. The estates are  
11 not settling all claims arising from the facts outlined in the Motion, but only those against  
12 LCPI and the 1<sup>st</sup> Lien Lenders. The estates are retaining their claims against other third  
13 parties to recover the Dividend and, due to the proposed settlement, the estates will have  
14 funds to pursue such claims. Therefore, I believe there is a real possibility that the estates  
15 will receive additional cash in the future.

16 9. I estimate there to be approximately \$60 million of non-lender creditor  
17 claims in these cases based upon the Debtors schedules and proofs of claim filed. Due to  
18 the significant secured claims asserted by the lien lenders and the potential unsecured  
19 deficiency claims, without the proposed settlement, the non-lender unsecured creditors  
20 could receive nothing or substantially less. Success on the Estate Claims and in  
21 defending against the LCPI Stay Relief Motions is uncertain, and there are numerous  
22 complex issues that impact the unsecured creditors potential distribution.

23 10. For all these reasons, I believe that the Term Sheet is fair and equitable, and  
24 in the best interests of the bankruptcy estates.

25 I declare under penalty of perjury that the foregoing is true and correct.

26 Executed on this 10 day of October, at Los Angeles, California.

27  
28   
Alfred H. Siegel

DECLARATION